

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas
The Honorable Jean H. Toal, Circuit Court Judge

Civil Action No. 2023-CP-40-01759
Appellate Case No. 2023-002007

John A. Tibbs and Margaret B. Tibbs.....**PLAINTIFFS,**

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; Aiw-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited; ASCO, L.P.; Atlas Asbestos Co; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries Of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas Ct, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services Corporation; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company Of N. C., Inc.; Starr Davis Company, Inc.; Starr Davis Company Of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves And Controls Us, Inc.; Velan Valve Corp.; Viking Pump, Inc.; Vistra Intermediate Company LLC; The William Powell

Company Wind Up, Ltd.; Yuba Heat Transfer LLC; Zurn Industries, LLC.....**DEFENDANTS,**

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, Third-Party Plaintiff..... **RESPONDENT,**

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa LTD., De Beers PLC, individually and as successor in interest to De Beers S.A., De Beers Centenary AG, De Beers Consolidated Mines Ltd., n/k/a De Beers Consolidated Mines Proprietary Ltd., De Beers UK Ltd., De Beers Jewellers LTD., De Beers Jewellers US, Inc., Anglo American US Holdings Inc., Element Six US Corp., Element Six Technologies US Corp., Element Six Technologies (OR) Corp., First Mode Holdings, Inc., Platinum Guild International (U.S.A.) Jewelry Inc., Lightbox Jewelry Inc., Forevermark US Inc., Anglo American Crop Nutrients (U.S.A.) LLC, Charter Consolidated Ltd., ESAB Corporation, Central Mining & Investment Corporation Ltd., Cape Holdco Ltd., The Law Debenture Corporation PLC, Cape Industrial Services Group Ltd., Mohed Altrad, Altrad UK Ltd., Cape UK Holdings Newco Ltd., Altrad Services, Ltd., f/k/a Cape Industrial Services Ltd., Altrad Investment Authority S.A.S., Sparrows Offshore Group Ltd., Hawk Bidco US Inc., ArranCo US, LLC, Sparrows Offshore, LLC, and The Sparrows Group, LLC.....**THIRD-PARTY DEFENDANTS,**

Of which ArranCo US, LLC, Hawk Bidco US Inc., and Sparrows Offshore, LLC are the.....**APPELLANTS.**

**APPELLANTS ARRANCO US, LLC; HAWK BIDCO (US) INC.; AND
SPARROWS OFFSHORE, LLC’S REPLY IN SUPPORT OF PETITION FOR
REHEARING AND SUGGESTION FOR REHEARING EN BANC**

Steven J. Pugh (S.C. Bar No. 14341)
Benjamin P. Carlton (S.C. Bar No. 101142)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Ashwin R. Sanzgiri (S.C. Bar No. 105198)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400

**ATTORNEYS FOR APPELLANTS ARRANCO US,
LLC, HAWK BIDCO (US) INC., AND SPARROWS
OFFSHORE, LLC**

ARGUMENT¹

By five-page Motion, with only two pages of content, the Receiver sought to dismiss this proper subsection 14-3-330(4) interlocutory appeal of the circuit court’s order granting, modifying, and continuing a receivership. Now, rather than respond in-kind to any of the valid points overlooked or misapprehended which were set forth in the Sparrows Appellants’ Petition for Rehearing, the Receiver has made another five-page filing, again, with only two pages of content, summarily stating the Petition for Rehearing sets forth no points this Court overlooked upon initial review. Tellingly, in neither the Motion nor in the Receiver’s Court-required Return to the Sparrows Appellants’ Petition for Rehearing does the Receiver discuss, reference, or even cite to the controlling statute expressly permitting this interlocutory appeal, which is quoted as follows:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (4) *An interlocutory order* or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or *granting, continuing, modifying*, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330(4) (emphasis added).

Respectfully, the issues presented in the Sparrows Appellants’ Initial Brief, Return to Motion to Dismiss, and Petition for Rehearing are significant, especially because they concern violations of due process and other constitutional rights; activity in contravention of South Carolina law and long-established Supreme Court precedent; improper receiverships over active foreign entities with no assets in or contacts with South Carolina; and proceedings asserted by the Receiver—as an “arm of the Court”—against the Sparrows Appellants and others who likewise

¹ By continuing to prosecute this appeal, the Sparrows Appellants do not intend to waive, and expressly preserve, all defenses to the underlying action, including the defense of lack of personal jurisdiction and impropriety of the purported receiverships over CIHL and Cape PLC.

have no assets in or contacts with South Carolina. And, upon dismissal, certain points were overlooked and misapprehended by this Court.

As noted, the Order granting the Motion to Dismiss overlooked or misapprehended the above-quoted controlling statute permitting this interlocutory appeal, the controlling standard that appealability is to be determined on a case-by-case basis, and the controlling, fundamental principles of statutory interpretation and separation of powers, all in the context of a receivership that requires heightened scrutiny. The Receiver contends that is not the case, but has never once filed with this Court a substantive argument that refutes any of the points previously raised as to why the December 6 Order is immediately appealable. This failure by the Receiver—continued in the Receiver’s Court-required Return to the Sparrows Appellants’ Petition for Rehearing—amounts to an abandonment of the subject Motion. *Cf. Holly Woods Ass’n of Residence Owners v. Hiller*, 392 S.C. 172, 190, 708 S.E.2d 787, 797 (Ct. App. 2011) (“An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.”).

The following points that have been raised repeatedly but never addressed by the Receiver, and were either not addressed in this Court’s Order dismissing the appeal or overlooked and misapprehended by this Court, are as follows:

1. The December 6 Order took the receivership created in *Park v. Armstrong International, Inc., et al.*, 2021-CP-40-02727 over Cape PLC (a Bailiwick of Jersey entity), and at the request of the Receiver, **granted** a new receivership over a separate legal entity, Cape Intermediate Holdings Limited (“CIHL”) (a United Kingdom entity that is not even a party to this litigation and which had no notice of the appointment of a Receiver over it). *See* Pet. for Reh’g at

2–3, 5–7; Return to Mot. to Dismiss at 4–11. This makes the December 6 Order appealable pursuant to subsection 14-3-330(4) of the South Carolina Code.

2. The December 6 Order **modified** the scope of the *Park* Cape PLC Receivership retroactively to allow for action outside of the *Park* case and did so explicitly. *See* Pet. for Reh’g at 7–8; Return to Mot. to Dismiss at 4–11. As with the granting noted above, this makes the December 6 Order appealable pursuant to subsection 14-3-330(4) of the South Carolina Code.

3. The December 6 Order **continued** the Cape PLC receivership. *See* Pet. for Reh’g at 8–9; Return to Mot. to Dismiss at 4–11. This is true under any reasonable definition that could have been chosen or intended by the General Assembly, per the plain meaning of the statute. *Id.*; *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535–36, 725 S.E.2d 693, 695 (2012). This again, makes the December 6 Order appealable pursuant to subsection 14-3-330(4).

4. The Receiver’s citation to a “Packet of Orders” is inapplicable for a variety of reasons:

a. The Supreme Court’s Order in *Childers v. Davis Mechanical Contractors, Inc., et al.*, was issued on different facts, procedural grounds, and in a manner that makes it inappropriate to rely on either as binding authority or dispositive of these issues on the merits when appealability is to be determined on a case-by-case basis. *See* Pet. for Reh’g at 9–13; Return to Mot. to Dismiss at 12–14.

b. Orders from other appellate cases are inapplicable due to their applicability to the insurance context, different procedural posture, and the fact those cases lack the fundamentally appealable issues set forth above. Return to Mot. to Dismiss at 12–16. None of the cases in the “Packet of Orders” includes the creation of a new receivership over a separate entity, the change in scope of a receivership between cases, *and* the continuation of a receivership as set

forth above and in the previous filings. Any *one* of those grounds makes an Order appealable, yet all three exist here.

5. The December 6 Order’s findings as to personal jurisdiction are appealable as a result of the other appealable issues set forth herein and in the Sparrows Appellants’ other filings. *See, e.g., QZO, Inc. v. Moyer*; 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004) (“Although a pre-trial motion to dismiss based on lack of personal jurisdiction is not usually immediately appealable, it can be considered when other appealable issues are presented to an appellate court.”).

CONCLUSION

Each of these grounds presents a separate reason that this Court should take up these issues on the merits, after full briefing from both sides to this appeal. When the General Assembly passed Section 14-3-330, it codified, as a matter of public policy, that when a circuit court takes nearly any action as to receivers—either a granting, modification, or continuation—the drastic and severe nature warrants *immediate* and prompt review by an appellate court. This review is critical, as once a Receiver begins acting on behalf of the entity over which it is a Receiver, many actions cannot ever be undone or rectified. *See, e.g., Miller v. S. Land & Lumber Co.*, 53 S.C. 364, 367, 31 S.E. 281, 282 (1898) (“While the court of equity, in proper cases, has the power to place a debtor’s property in the hands of a receiver, this power should be exercised with great caution, *lest the injury thereby caused be far greater than the injury sought to be averted.*” (emphasis added)).

Here, the circuit court’s December 6 Order took the separate actions of creating a receivership over CIHL, continuing the Cape PLC receivership created in *Park*, and further modifying the Cape PLC receivership at the request of the Receiver. All of these are immediately appealable, and as a result, so are the December 6 findings as to personal jurisdiction. For the

reasons set forth herein, and in the Petition for Rehearing, Sparrows Appellants respectfully request this Court grant rehearing en banc.²

Respectfully submitted,

/s/ Steven J. Pugh

Steven J. Pugh (S.C. Bar No. 14341)
Benjamin P. Carlton (S.C. Bar No. 101142)
Carmen V. Ganjehsani (S.C. Bar No. 73515)
Ashwin R. Sanzgiri (S.C. Bar No. 105198)
RICHARDSON, PLOWDEN & ROBINSON, PA
1900 Barnwell Street
Columbia, South Carolina 29201
(803) 771-4400

**ATTORNEYS FOR APPELLANTS ARRANCO US,
LLC, HAWK BIDCO (US) INC., AND SPARROWS
OFFSHORE, LLC**

June 17, 2024

² Per Rules 240 and 208(b)(6) of the South Carolina Appellate Court Rules, Sparrows Appellants adopt and incorporate herein all additional arguments raised and authorities cited by similarly situated Appellants in Appellate Case Nos. 2023-002006 through -002011 & 2024-000524. Further, the Sparrows Appellants incorporate herein all prior filed pleadings, and motions, memoranda, appellate briefing, and other relevant materials that may be properly considered by this Court.

CERTIFICATE OF SERVICE

I, Ashwin R. Sanzgiri, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellants ArranCo US, LLC, Hawk Bidco (US) Inc., and Sparrows Offshore, LLC, do hereby certify that I have on this date served the foregoing **REPLY IN SUPPORT OF PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC**, by personally serving the same pursuant to Section (d)(1) of the Supreme Court's Order dated April 24, 2024, on all counsel of record using the primary email addresses listed in the Attorney Information System (if applicable).

Parties Served:

John T. Lay, Jr. (jlay@gwblawfirm.com)
Gray T. Culbreath (gculbreath@gwblawfirm.com)
Lindsay A. Joyner (ljoyner@gwblawfirm.com)
Laura W. Jordan (ljordan@gwblawfirm.com)
Eleanor L. Jones (ejones@gwblawfirm.com)
Jonathan M. Robinson (jon@smithrobinsonlaw.com)
Shanon N. Peake (shanonp@smithrobinsonlaw.com)
G. Murrell Smith, Jr. (murrell@smithrobinsonlaw.com)
Troy S. Brown (troy.brown@morganlawis.com)
Dana E. Becker (dana.becker@morganlewis.com)
Brady Edwards (brady.edwards@morganlewis.com)
Robert W. Jacques (robert.jacques@morganlewis.com)
Paul A. Scrudato (paul.scrudato@morganlewis.com)

Counsel for the Receiver for Cape PLC

Theile B. McVey (tmcvey@kassellaw.com)
John D. Kassel (jkassel@kassellaw.com)
Jamie D. Rutkoski (jrutkoski@kassellaw.com)
Charles William Branham, III (tbranham@dobslegal.com)
Kevin W. Paul (kpaul@dobslegal.com)
David Christopher Humen (dhumen@dobslegal.com)

Counsel for Plaintiffs

James H. Elliott, Jr. (jelliott@richardsonplowden.com)
Cameron D. Berthelsen (cberthelsen@richardsonplowden.com)

Counsel for Co-Appellants AA/DB Non-US Third-Party Defendants

A. Victor Rawl, Jr. (vrawl@grsm.com)

Counsel for Co-Appellants ESAB Corporation; Central Mining and Investment Corp., Ltd.; and Charter Consolidated Ltd.

M. Todd Carroll (todd.carroll@wbd-us.com)

Kevin A. Hall (kevin.hall@wbd-us.com)

M. Elizabeth O'Neill (elizabeth.oneill@wbd-us.com)

Counsel for Co-Appellants Mohed Altrad and Altrad Investment Authority SAS

Stephen L. Brown (sbrown@ycrlaw.com)

James D. Gandy, III (tgandy@ycrlaw.com)

Stephen A. Griffith (sgriffith@ycrlaw.com)

Counsel for Asbestos Corporation Limited

/s Ashwin R. Sanzgiri

Ashwin R. Sanzgiri (S.C. Bar No. 105198)

RICHARDSON, PLOWDEN & ROBINSON, PA

Post Office Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

**ATTORNEY FOR APPELLANTS ARRANCO US, LLC,
HAWK BIDCO (US) INC., AND SPARROWS
OFFSHORE, LLC**

Date: June 17, 2024

From: [Ashwin Sanzgiri](#)
To: ["tmcvey@kassellaw.com"](#); ["jkassel@kassellaw.com"](#); ["kpaul@dobslegal.com"](#); ["jirutkoski@kassellaw.com"](#); ["tbranham@dobslegal.com"](#); ["achapman@dobslegal.com"](#); ["dhumen@dobslegal.com"](#); ["khardin@dobslegal.com"](#); ["tbarnes@dobslegal.com"](#); ["pdp@rplegalgroup.com"](#); ["jchandler@rplegalgroup.com"](#); ["bb@rplegalgroup.com"](#); ["Kevin.Hall@wbd-us.com"](#); ["Elizabeth.ONeill@wbd-us.com"](#); [James Elliott](#); [Cameron Berthelsen](#); [Steve Pugh](#); [Ben Carlton](#); [Carmen Ganjehsani](#); [Vic Rawl](#); ["jon@smithrobinsonlaw.com"](#); ["murrell@smithrobinsonlaw.com"](#); ["ljoyner@gwblawfirm.com"](#); ["jlay@gwblawfirm.com"](#); ["gculbreath@gwblawfirm.com"](#); ["ljordan@gwblawfirm.com"](#); ["ejones@gwblawfirm.com"](#); ["sbrown@ycrlaw.com"](#); ["RHines@ycrlaw.com"](#); ["tgandy@ycrlaw.com"](#); ["golive@ycrlaw.com"](#); ["AJustman@ycrlaw.com"](#); ["Brown, Troy S."](#); ["dana.becker@morganlewis.com"](#); ["brady.edwards@morganlewis.com"](#); ["robert.jacques@morganlewis.com"](#); ["paul.scrudato@morganlewis.com"](#); ["shanonp@smithrobinsonlaw.com"](#); [Charity McQueen](#); ["Donna.Yingling@wbd-us.com"](#); ["Todd.Carroll@wbd-us.com"](#); [Todd.Carroll@wbd-us.com](#); [Helen Elliott](#)
Subject: John A. Tibbs v. Asbestos Corporation Limited (Appellate Case No. 2023-002007)
Date: Monday, June 17, 2024 4:46:24 PM
Attachments: [Reply to Return \(Dec. 18 Appeal\) - Sparrows Appellants.pdf](#)

Good afternoon,

Please find served upon you the Reply in Support of Petition for Rehearing and Suggestion for Rehearing En Banc on behalf of Appellants ArranCo US, LLC; Hawk Bidco (US) Inc.; and Sparrows Offshore, LLC, in the above-referenced case which we will be filing with the Court of Appeals of South Carolina later today.

Please let me know if you have any questions.

Thank you,

Ashwin

HOME	BIO	LOCATION
	Ashwin R. Sanzgiri Attorney ASanzgiri@RichardsonPlowden.com	Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.576.3732 Fax: 803.779.0016 www.RichardsonPlowden.com

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